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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re M.B., a Person Coming Under the Juvenile  
Court Law.

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

JESSE B.,

Defendant and Appellant.

F078574

(Super. Ct. No. 517959)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Stanislaus County. Ann Q.  
Ameral, Judge.

Jessica M. Ronco, under appointment by the Court of Appeal, for Defendant and  
Appellant.

John P. Doering, County Counsel, and Maria Elena Ratliff, Deputy County  
Counsel, for Plaintiff and Respondent.

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\* Before Smith, Acting P.J., Snauffer, J. and DeSantos, J.

## **INTRODUCTION**

Appellant Jesse B. (father) appeals from the juvenile court's Welfare and Institutions Code<sup>1</sup> section 366.26 order terminating his parental rights and placing the minor, M.B., for adoption. Father contends the juvenile court abused its discretion by failing to apply the beneficial parent-child relationship exception. We affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

When M.B. was born in late March 2017, mother<sup>2</sup> tested positive for several substances including THC<sup>3</sup>, opiates and amphetamine. Father tested positive for multiple substances including THC, benzodiazepine, methamphetamine and MDMA, commonly known as ecstasy. The Stanislaus County Community Services Agency (agency) established a safety plan to allow M.B. to go home with her parents, who resided with paternal relatives. A family maintenance plan was created, and both parents were to submit to substance abuse assessments and participate in substance abuse treatment; neither parent complied.<sup>4</sup>

On May 24, 2017, a neighbor reported that father was holding a gun to his head, with mother and M.B. in the room. On June 5, 2017, after numerous attempts to meet with and assess the parents, social workers attempted a home visit. When they inquired about the parents at the residence, the social workers were told to "Check the trailer."

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<sup>1</sup> References to code sections are to the Welfare and Institutions Code.

<sup>2</sup> Mother is not a party to this appeal.

<sup>3</sup> THC refers to the chief intoxicant in marijuana. (<https://www.merriam-webster.com/dictionary/THC>, as of May 9, 2019.)

<sup>4</sup> Cites to the record from the inception of the section 300 case through the hearing on the section 388 petition are from the record and transcripts in case No. F078366. Cites to the record and transcripts pertaining to the section 366.26 hearing are from case No. F078574.

The social workers knocked on the door of the trailer and although they could hear noises from inside, no one answered. The social workers called for police assistance.

Police officers arrived and informed the social workers that the address had “constant traffic and people arrested for drug charges.” Officers pulled father from the trailer; father stated mother and M.B. were inside. Officers entered the trailer and found a tablet of pain medication with codeine in M.B.’s crib. Multiple pipes and needles, and a burnt piece of foil consistent with heroin use, were in the trailer. Mother admitted to having recently used methamphetamine.

Father admitted he had been arrested and released on May 26, 2017, for a physical altercation with his mother. Father acknowledged using methamphetamine and heroin after he was released.

Both parents were arrested for child endangerment. M.B. was taken into protective custody and placed in foster care. A section 300 petition was filed on behalf of M.B., who was just over two months old.

At the June 8, 2017 detention hearing, both parents were in custody but appeared at the hearing. The parents were advised to contact the agency as soon as they were released from custody to arrange for visitation. The parents were also informed that reunification services may be limited to six months, during which time they would be expected to “make significant progress in resolving the issues that caused your daughter to be removed from your care.” Both parents filled out Indian Child Welfare Act (ICWA) forms indicating they may have Indian heritage.

The jurisdiction and disposition report noted that despite numerous attempts at contact, the parents had not made themselves available to the agency so that the ICWA notice could be completed. The parents also failed to fill out questionnaires on their social history. Father was considered an alleged father because he was not listed on M.B.’s birth certificate and the agency recommended a denial of reunification services.

Father had not visited with M.B. since detention. Both parents had been given referrals for parenting, co-dependency, individual counseling, and substance abuse assessments. Neither parent followed through on any of the referrals and neither parent completed a substance abuse assessment.

At the July 19, 2017 jurisdiction and disposition hearing, neither parent appeared even though they were not in custody. The juvenile court continued the matter for the agency to serve ICWA notices, using whatever information was available.

On August 22, 2017, father signed a declaration of paternity. The agency recommended he be elevated to presumed father status and provided reunification services. Father had completed a substance abuse assessment. The juvenile court found the section 300, subdivision (b) allegations of the section 300 petition true, declared M.B. a dependent of the juvenile court, removed her from parental custody and granted reunification services to both parents. The juvenile court again admonished the parents that “services may be limited to a period of six months” and that it was “very, very important that both of you make nothing but excellent progress.”

The case plan approved for father required him to participate in individual counseling, complete a parenting program, participate in a substance abuse assessment and follow all recommendations from the assessment and submit to random drug testing. Visitation was to be once per week.

The juvenile court found ICWA did not apply on October 18, 2017.

On November 8, 2017, an interim review hearing was held. Neither parent appeared. Father had refused to submit to random drug testing on October 23, 2017, indicating he would test positive for THC. Father was not in substance abuse treatment and had not begun parenting classes. Father was reported to be making little to no progress on his case plan.

The six-month review report recommended termination of reunification services to both parents and the setting of a section 366.26 hearing to terminate parental rights. Father had missed 10 scheduled visits with M.B.; had refused to submit to drug testing in September, October, and November 2017; and had not completed any component of his case plan. The social worker noted father “has had a long history of drug use.” The social worker opined that there was not a substantial probability M.B. would be returned to her parents with an additional six months of services because of the ongoing substance abuse issues and failure to complete any component of the case plan. “Continuing services would only delay permanency and [] stability” for M.B.

The review hearing was eventually held on April 19, 2018. Father submitted a certificate indicating that as of April 13, 2018, he had completed three months of residential and outpatient treatment. Father was residing in a sober living environment. A report from Stanislaus County Adult Drug Court reported father’s diagnosis as “Opioid Use Disorder, Severe,” and indicated father had tested negative on April 17, 2018.

The juvenile court noted that father entered “into drug treatment” so he could “avail himself of adult drug court and stay out of jail.” The juvenile court also stated that “father has been diagnosed with severe opoid [*sic*] use disorder, and having three months of sobriety, while it is commendable, is not, in this Court’s mind, sufficient.” It also was noted that there were multiple instances of positive tests and refusals to test by father in the dependency case. Father had attended only one individual counseling session and had “a long, long ways to go.”

The juvenile court noted that father did not have a “history of regular and consistent visits” with M.B. M.B. had been out of parental custody for over 10 months and the “12-month date would be August 5th, at the very latest.” The juvenile court opined that father could not adequately address his severe opioid use disorder and be able

to have M.B. returned to his care by that date. The juvenile court found father's progress to be "limited" and terminated reunification services and set a section 366.26 hearing.

The section 366.26 report recommended termination of parental rights and a permanent plan of adoption. M.B. had been moved to a new home on July 21, 2018, because of an emergency in the previous foster home. M.B. was adjusting well in the new home. Father had been visiting once monthly, as allowed, but the visits were not generally positive. M.B. often cried when father tried to hold her or play with her.

New counsel was appointed for father on August 17, 2018, who sought to file a section 388 petition. The juvenile court ordered counsel to file any section 388 petition by August 21, 2018. The juvenile court asked for the visitation logs of father's visits to be submitted to the juvenile court and continued the hearing.

The visitation logs reflected that M.B. was consistently happy before visits with father and anxious or crying during visits with him. On April 3, 2018, M.B. did not want to leave the social worker's arms to go to father and cried throughout the visit. On August 10, 2018, M.B. was upset at the start of the visit; immediately turned away from father when she saw him; and cried for 30 minutes, at which point the visit was ended. When the social worker removed M.B. from the room, she stopped crying.

Father filed his section 388 petition on August 21, 2018, seeking reinstatement of reunification services. Father alleged he had been sober for over nine months; was residing in a sober living home; had completed three months of treatment; was attending Alcoholics Anonymous and Narcotics Anonymous meetings; and was engaging in community work with the Salvation Army. Father asserted that granting his section 388 petition was in the best interests of M.B. because she had only been in the new foster home for one month and had not formed any significant bond.

The agency filed an amended section 366.26 report indicating the foster family had been unwilling to continue providing a home for M.B. because of the length of time

it could take to complete the court process. M.B. was moved to a new foster home on August 21, 2018, and was bonding well with the new caregivers and their three children. Father failed to attend a visit with M.B. scheduled for September 4, 2018.

The juvenile court held a hearing on October 9, 2018, to determine whether to grant an evidentiary hearing on the section 388 petition. Father's counsel asked that the section 388 petition be granted outright or an evidentiary hearing be set. Counsel for M.B. opposed the section 388 petition. County counsel opposed an evidentiary hearing and the granting of the petition. County counsel argued father's case plan called for him to participate in parenting classes and individual counseling, not just substance abuse treatment, and maintained there was no evidence that granting the section 388 petition was in M.B.'s best interests.

The juvenile court noted that many of the matters alleged to constitute changed circumstances were things that had been completed when reunification services were terminated. The juvenile court opined that if a parent's circumstances had not changed sufficiently to permit placement of the child with the parent, reopening reunification would not promote stability and would not be in the best interests of the child.

The juvenile court noted that father took "a significant period of time to get on board with addressing his substance abuse issues." The juvenile court found it concerning that "a number of visiting logs" revealed M.B. had a difficult time visiting with father. The juvenile court stated that section "388 is really an escape mechanism" for when parents have completed a reformation before parental rights are terminated.

The juvenile court concluded there had not been a sufficient showing to grant an evidentiary hearing on the section 388 petition and denied the petition.

Father filed a timely appeal of the denial of his section 388 petition. That appeal is before this court in case No. F078366.

The amended section 366.26 report recommended that the parental rights of mother and father be terminated and a plan of adoption of M.B. by the current caregivers be approved. M.B. had been referred to the Valley Mountain Regional Center to address concerns with speech and hearing. M.B. was “connecting well” with her caregivers.

M.B.’s current caregivers were interested in adopting her but were not interested in kinship adoption or legal guardianship. The current caregivers were committed to providing permanency and a loving home for M.B. The social worker opined that even though M.B. had been placed with the current caregivers for a short time, the “family loves” her. The social worker opined that M.B. “appeared to enjoy” the attention she received from the caregivers and the caregivers were attentive to her needs. The caregivers were able to “provide a safe and loving environment” for M.B. and were committed to adoption and the responsibilities of raising M.B. to adulthood.

The section 366.26 hearing was conducted on November 15, 2018. Father testified that M.B. and he visited monthly and exchanged “hugs and kisses” during his visits. Father asked that M.B. be given “a chance to have her daddy back in her life and to prove that I can be the father that she deserves.” He wanted reunification services reinstated so he could “complete those parenting classes.” Father testified that he loved his daughter “with all my heart.”

The agency argued that M.B. had been out of parental custody for “a significant period of her life.” Although father “does love his daughter,” the visitation logs “paint a different story of how the visits go.” The visitation logs indicate M.B. has trouble with the visits and cried during visits with father. The agency further argued that the statutory preference is for adoption; the minor was adoptable; and the current caregivers were ready and willing to provide M.B. with a permanent, loving, and stable home. M.B.’s counsel supported the agency’s position.



Father's counsel argued that M.B.'s placement had changed during the course of the dependency case and the "individual that she knows best and longest is" father. Father's counsel queried whether "adoption at this time would outweigh the detriment of permanently terminating" father's parental rights.

The juvenile court found that father's progress had been "very limited." The juvenile court noted that M.B. was removed from parental custody when she was two months old and had never been returned to parental custody. M.B. was now approximately one year seven months old.

The juvenile court noted that father had the burden of proving a beneficial parent-child relationship exception and had not "met the burden of proof." The juvenile court found there was no evidence that "terminating parental rights would be so difficult on [M.B.] that it would be better to not terminate parental rights."

The juvenile court found that termination of parental rights would not be detrimental to M.B. The parental rights of mother and father were "permanently terminated" and "[a]doption procedures shall be initiated." The order was filed on November 30, 2018.

Father filed a timely notice of appeal of the termination of his parental rights on December 24, 2018.

### **DISCUSSION**

Father's sole contention in this appeal is that the juvenile court abused its discretion by failing to find that a beneficial parent-child relationship existed to preclude termination of parental rights. We disagree.

#### ***Parent-Child Benefit Exception***

Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability. If the child is likely to be adopted, adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination

of parental rights, unless one of the specified circumstances provides a compelling reason for finding termination of parental rights would be detrimental to the child. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Although section 366.26, subdivision (c)(1) acknowledges termination may be detrimental under specifically designated circumstances, a finding of no detriment is not a prerequisite to the termination of parental rights. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1347.) It is the parent's burden to show termination would be detrimental under one of the exceptions. There is a strong preference for adoption. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) When a juvenile court rejects a detriment claim and terminates parental rights, the appellate issue is whether the juvenile court abused its discretion. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

For the section 366.26, subdivision (c)(1)(B)(i) exception to apply, known as the beneficial relationship exception, the relationship between parent and child must promote the well-being of the child to such a degree that it outweighs the well-being of the child in a permanent home with adoptive parents. The juvenile court balances the strength and quality of the natural parent-child relationship in a tenuous placement against the security and sense of belonging a new family would confer. If severing the natural parent-child relationship would deprive the child of a substantial and positive emotional attachment so that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)).

Interactions between the natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, comfort, affection, and stimulation. The relationship arises from day-to-day interaction, companionship, and shared experiences. The exception applies only where the court finds regular visits and

contact have continued or developed a significant, positive, emotional attachment from child to parent. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

The factors to consider when testing whether a parental relationship is important and beneficial include the age of the child, the portion of the child's life spent in the parent's custody, the positive or negative effect of interaction between the parent and child, and the child's particular needs. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467.) "[T]he relationship must be such that the child would suffer detriment from its termination." (*Ibid.*) Father failed to show how M.B. would suffer detriment from the termination of his parental rights.

The dependency petition was filed on June 7, 2017. The section 366.26 contested hearing was held 17 months later. During those 17 months, father had supervised visits, and missed several visits. Father testified his visits with M.B. included lots of hugs, smiles, and kisses. The visitation logs, however, showed that M.B. was consistently happy before visits with father and anxious or crying during visits with him. Father testified he and M.B. played with toys and dolls during visits and he would bring food she liked, such as applesauce.

The parent bears the burden of showing more than loving contact and pleasant visits. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953–954.) Here, the evidence did not even show pleasant visits. "The parent has the burden of proving the statutory exception applies." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.) A parent who has failed to reunify with an adoptable child, as was the case here, may not derail adoption merely by showing the child would derive some benefit from continuing the parent-child relationship during periods of visitation. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937.)

Father needed to demonstrate he occupied a parental role in M.B.'s life resulting in a significant, positive, emotional attachment from child to parent. (*In re Breanna S.*,

*supra*, 8 Cal.App.5th at p. 648.) Here, evidence of such a relationship was absent. M.B. was removed from father's custody at two months of age and remained out of his care for the subsequent 17 months, during which father had supervised visits; father missed numerous visits; and M.B. was unhappy and upset during visits with father.

M.B. had not spent any time in father's care for the duration of the dependency, a period of 17 months. During the first two months of M.B.'s life, while in father's care, she was subjected to mother's and father's substance abuse. During the period of reunification, father failed to maintain sobriety; was unable to provide a safe and secure home; and failed to visit consistently with M.B. Evidence that father occupied a crucial parental role in M.B.'s life was lacking. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 954.)

Father failed to show detriment or harm if the parent-child relationship ended. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Father testified M.B. was happy to see him during visits, but that testimony was contradicted by the visitation logs. As for the claim that M.B. knows father "best and longest," again the record does not support such a claim. M.B. had been placed with the prospective adoptive parents on August 21, 2018, nearly three months before the section 366.26 hearing, and was bonding well with the new caregivers and their three children. M.B. clearly was more comfortable in the presence of the prospective adoptive parents than with father.

There was no evidence M.B. was deeply bonded with father and would suffer detriment if his parental rights were terminated. The evidence established that M.B. was happy, well cared for, and loved in her current placement with the prospective adoptive parents.

Father did not meet his burden of establishing M.B. would suffer great detriment, or any detriment, if his parental rights were terminated, such that it outweighed M.B.'s need for security and stability, which she had with the prospective adoptive parents. The juvenile court did not abuse its discretion in terminating father's parental rights to allow

M.B. to be adopted by her current caregivers and prospective adoptive parents. (See *In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

**DISPOSITION**

The November 30, 2018 order terminating father's parental rights to the minor, M.B., and placing the minor for adoption is affirmed.